

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 05-131
RE: JUDGE BRANDT C. DOWNEY, III

Case No.: SC 05-2228

**RESPONSE TO THE HONORABLE
BRANDT C. DOWNEY, III'S
MOTION FOR MORE DEFINITE STATEMENT**

Special Counsel for the Hearing Panel of the Florida Judicial Qualifications Commission responds to the Honorable Brandt C. Downey, III's ("Respondent") motion for more definite statement as follows:

1. In his motion, Respondent contends he cannot respond to counts II and III of the notice of formal charges because these counts do not state with particularity how, if the allegations therein are true, Respondent violated Canons 1 and 2 of the Code of Judicial Conduct. Particularly, Respondent contends Special Counsel must specify how his conduct alleged in count II failed to "uphold the integrity and independence of the judiciary" in violation of Canon 1, how his conduct alleged in counts II and III failed to "comply with the law ... in a manner that that promotes public confidence in the integrity and impartiality of the judiciary," in violation of Canon 2A, and how his conduct alleged in count III showed bias or prejudice based upon gender, in violation of Canon 3B(5).

2. Rule 6(g), Florida Judicial Qualifications Commission Rules, states: "The notice [of formal charges] shall ... specify in ordinary and concise language the charges

against the judge and allege the essential facts upon which such charges are based ...” (emphasis added). Moreover, Rule 1.10(b), Florida Rules of Civil Procedure, made applicable to this proceeding by Rule 12(a), Florida Judicial Qualifications Commission Rules, states: “A pleading which sets forth a claim for relief ... must state a cause of action and shall contain ... a short and plain statement of the ultimate facts showing that the pleader is entitled to relief.” (emphasis added).

3. Rule 1.140(e), Florida Rules of Civil Procedure, made applicable to this proceeding by Rule 12(a), Florida Judicial Qualifications Commission Rules, and upon which Respondent’s motion is based, states:

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading.

(emphasis added).

See Trawick, Fla. Prac. And Proc., §10-5 (“The motion [for more definite statement] should not be granted if the responding pleader can admit, deny or plead that he is without knowledge.”).

4. Respondent’s motion is facially without merit because rather than asserting the notice of formal charges is vague or ambiguous and does not contain a concise statement of the essential facts on which the charges are based, Respondent asserts the notice of formal charges must specifically explain the legal conclusions to be drawn from his alleged conduct. Neither the Florida Judicial Qualifications Commissions

Rules nor the Florida Rules of Civil Procedure require this type of pleading. Respondent, in accordance with the Rules, has notice of the essential facts upon which the charges are based. Respondent's motion evidences his understanding of the charges against him such that he can admit, deny, or plead that he is without knowledge of the charges, as Respondent attaches affidavits to his motion that "refute most of the allegations in Count III and make it quite clear that neither of these two attorneys feel that these charges are well founded." (Respondent's Motion for More Definite Statement, ¶ 8; see also ¶ 9 ("The attached redacted affidavits show a total lack of prejudice or gender bias.")).

5. Moreover, the notice of formal charges does not require Respondent to admit, deny, or plead that he is without knowledge as to whether his alleged conduct, if true, violated the Code of Judicial Conduct, but only requires him to plead to the essential and underlying facts. Special Counsel lists the Canons from the Code of Judicial Conduct in the notice of formal charges only as legal support for its assertion that Respondent is subject to discipline in accordance with Article V, Section 12 of the Constitution of the State of Florida. Accordingly, rather than permitting Respondent to inappropriately delay this proceeding by requiring Special Counsel to specifically explain the legal conclusions to draw from his alleged conduct, the Hearing Panel should deny Respondent's motion and require him to promptly admit, deny, or plead that he is without knowledge of the facts contained in the notice of formal charges.

WHEREFORE, Special Counsel respectfully requests the Hearing Panel enter an order denying Respondent's motion for more definite statement and requiring

Respondent to answer the notice of formal charges no later than 10 days from the date of the Hearing Panel's order.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to Brandt C. Downey, III, 315 Court Street, Room 421, Clearwater, Florida 33756, Thomas C. MacDonald, Esq., 1904 Holly Lane, Tampa, Florida 33629, John R. Beranek, Esq., Ausley & McMullen, P.A., Washington Square Building, 227 South Calhoun Street, Tallahassee, Florida 32302, this ____ day of March, 2006.

Attorney

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